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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1989

Addendum

CHINA*

[8 October 1992]

SUPPLEMENTARY REPORT SUBMITTED TO THE UNITED NATIONS ON THE IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. The People's Republic of China seeks to encourage respect for human rights and fundamental freedoms. It participated actively in the drafting of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention), which it ratified in September 1988. On 3 November of the same year, China officially became a State party to the Convention.

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* The present document contains the supplementary report of China requested by the Committee against Torture at its fourth session, after consideration of the initial report of China (CAT/C/7/Add.5), on 27 April 1990 (see CAT/C/SR.50 and 51 and the annual report of the Committee against Torture, Official records of the General Assembly, forty-fifth session, supplement No. 44 (A/45/44, paras. 471 to 502)).

2. In accordance with article 19 of the Convention, China submitted its initial report on the implementation of the Convention in December 1989. The United Nations Committee against Torture considered the report on 27 April 1990. The present supplementary report is being submitted on the basis of the initial report, in keeping with the Committee's request.

3. This report follows the guidelines of the Committee as to how reports should be drafted, and consists of two main parts. The first part provides general information, such as an outline of China's political, legislative and judicial systems; the second part deals with China's implementation of articles 2 to 16 of the Convention. In conformity with the presentation requested, the members of the Committee will find that the relevant paragraphs of the present supplementary report, in keeping with the specific provisions of the Convention, provide the answers to the various questions asked during the consideration of China's initial report on the implementation of the Convention.

PART I: GENERAL COMMENTS

A. Structure of the power of the State

4. The Constitution of the People's Republic of China establishes the political system of the People's National Congress, whose principle is democratic centralism, in which all power belongs to the people. The People's National Congress is composed of deputies elected for a five-year term by the provinces, the autonomous regions and the municipalities falling directly under the central authority, and also by the armed forces.

5. The organs of the State are the People's National Congress and its Standing Committee, the President of the People's Republic of China, the State Council, the Central Military Commission, the people's local congresses and the people's local governments at the various levels, the organs of self-government of the national autonomous regions, the people's courts and the people's procuratorates.

6. The People's National Congress is the highest organ of State power. It exercises the legislative power of the State and decides on the main issues concerning affairs of State. It elects and can dismiss the President and Vice-President of the People's Republic of China, the chairman of the Central Military Commission, the President of the People's Supreme Court and the Procurator-General of the People's Supreme Procuratorate; it elects and can dismiss the Prime Minister of the State Council, the Deputy Prime Ministers, the Ministers of State, the Ministers, the chairmen of the Commissions, the chairman of the Audit Commission and the Secretary-General of the State Council.

7. The Standing Committee is the permanent body of the People's National Congress. In periods when the Congress is not in session, the Committee may exercise a number of the supreme powers of State, as authorized by the Constitution. The Standing Committee of the People's National Congress is composed of the President, the Vice-Presidents, the Secretary-General and the ordinary members of the Congress.

8. The Standing Committee of the People's National Congress has, inter alia, the following duties and powers: it interprets the Constitution and the law and ensures their application; it exercises legislative power within the framework of the provisions of the Constitution; it reviews and verifies the conformity of administrative regulations and local regulations with the Constitution and the law; it reviews and adopts proposals for partial readjustments of the national economic and social development plan, and the State budget; it supervises the activities of the State Council, the Central Military Commission, the People's Supreme Court and the People's Supreme Procuratorate; it decides on other matters of major importance to the country; it exercises any other duties and powers that the People's National Congress may assign it.

9. The President of the People's Republic of China occupies an important place in the State structure. In pursuance of the decisions of the People's National Congress and its Standing Committee, he promulgates the laws, appoints or dismisses the Prime Minister, the Deputy Prime Ministers, as well

as the Ministers and the chairmen of the Commissions, proclaims a state of war and orders mobilization, ratifies and denounces treaties and important agreements concluded with foreign States, and so on.

10. The State Council of the People's Republic of China (in other words, the People's Central Government) is the executive of the highest organ of State power, the highest administrative organ. Under the Constitution, it is accountable to the People's National Congress and its Standing Committee. The State Council is composed of the Prime Minister, the Deputy Prime Ministers, the Ministers of State, the Ministers, the chairmen of the Commissions, the chairman of the Audit Commission and the Secretary-General; the Prime Minister has overall responsibility for this Council.

11. The Central Military Commission of the People's Republic of China is the supreme authority for all of the armed forces; its chairman has overall responsibility for them and he is accountable to the People's National Congress and its Standing Committee.

12. The people's local congresses at the various levels are the local organs of State power. They make sure that the Constitution, laws and administrative regulations are observed and applied in their respective administrative areas and exercise any other powers vested in them by the Constitution and the law. The people's local governments at the various levels are the executives of the local organs of State power. Within the limits of the powers vested in them by law, they administer the economic, educational, scientific, cultural and other activities in their respective administrative regions.

13. The people's local governments at the various levels are elected by the corresponding people's local congresses. They are accountable to the congress, report to them on their activities and are placed under their control. The people's local governments at the district and higher levels are accountable, when the people's congresses at the corresponding level are not in session, to the standing committees of the people's congresses at the appropriate level and report to them on their activities. They are simultaneously accountable to the people's government, at the next highest level and report to them on their activities. Furthermore, the people's local governments at the various levels are administrative organs of the State placed under the sole direction of the State Council and subject to its authority alone.

14. The local courts are the judicial organs of the State and part of the machinery of the State's authority. The Constitution and the organizational law on the courts of the People's Republic of China have established three jurisdictions: the People's Supreme Court, the people's local courts at the various levels, the military courts and other people's special courts. There are four categories of people's court, in line with the administrative divisions of China: the People's Supreme Court, the people's higher courts, the people's intermediate courts and the people's lower courts. The people's special courts are jurisdictions established to hear cases in specific matters; they include the military courts, the railway courts, the maritime courts, etc. The people's special courts do not correspond to the administrative divisions and do not hear criminal, civil, economic or ordinary administrative cases. They only try cases that concern the relevant matters

or the ministries or specific cases. The People's Supreme Court supervises the judicial activities of the people's special courts. The People's Supreme Court is accountable to the People's National Congress and its Standing Committee. The people's local courts at the various levels are responsible to the people's congresses at the same levels and to their standing committees. The people's higher courts monitor the activity of the people's lower courts.

15. The people's procuratorates are the State organs responsible for monitoring the application of the laws, and they are also part of the machinery of State authority. Under the Constitution and the organizational law the people's procuratorates of the People's Republic of China, the people's procuratorates include: the People's Supreme Procuratorate, the people's local procuratorates at the various levels and the people's special procuratorates. The people's local procuratorates at the various levels include the provincial procuratorates, the procuratorates of the autonomous regions, the procuratorates of municipalities falling directly under the central authority, the branches of the provincial procuratorates, autonomous regions and municipalities falling directly under the central authority, the procuratorates of the autonomous departments and municipalities falling directly under a province, and the people's procuratorates of districts, municipalities, autonomous districts and urban districts. The people's special procuratorates include the military and the railway procuratorates.

B. Sources of law in China

16. There are three sources of law in China: the Constitution, the laws and the administrative rules and regulations.

17. China's Constitution was drawn up after wide-ranging consultation with the masses and it embodies the historical experience of the Chinese nation. It defines the great fundamental principles of the life of the country and Chinese society, such as the State's political system, the economic system, the method of organization of the Government, the rights and duties of the citizen, and so forth. The Constitution is adopted and amended by the People's National Congress, and its legal provisions take precedence over all other laws and legal provisions, which are founded on it. The present Constitution was reviewed and promulgated on 4 December 1982 at the fifth session of the People's Fifth National Congress.

18. The laws are drafted by the People's National Congress and its Standing Committee, by a specific legislative procedure. The laws enacted often deal with fundamental and important aspects of social relationships (criminal matters, civil matters involving persons or goods, etc.).

19. In accordance with the Constitution, the State Council is empowered to decree administrative measures, draft laws and administrative rules and regulations, take decisions and issue ordinances. The laws and administrative rules and regulations must be in conformity with the Constitution and the law and must not contravene them. The Standing Committee of the People's National Congress has the power to annul any administrative rules and regulations, or any decisions and ordinances by the State Council which conflict with the

Constitution and the laws. The State Council may amend or annul any inappropriate decisions or ordinances by the local administrative organs at the various levels.

C. Organs of justice and their functions

20. Broadly speaking, the organs of justice in China encompass the people's courts, the people's procuratorates as well as the organs of public security and the organs of the administration of justice which fall under the State Council.

21. The task of the people's courts is to try criminal, civil, economic, maritime, commercial and administrative cases, with complete independence, and deliver judgements to punish offenders, settle civil disputes, uphold the dignity of the laws and the national system, maintain social order, protect the property of the State and of citizens, and safeguard the inviolability of the individual. The people's courts proceed independently, in conformity with the law, and are not subject to any interference from administrative organs, social groups or individuals. The people's courts apply the rule of two-tier jurisdiction, and decisions taken on second instance are final.

22. Depending to the nature of the proceedings, the people's courts are divided into civil, criminal, economic and administrative jurisdictions.

23. The people's lower courts try ordinary criminal and civil cases on first instance, settle straightforward civil disputes and minor criminal cases which do not require a hearing, and direct the work of the people's conciliation commissions.

24. The peoples intermediate courts examine the following criminal cases on first instance: counter-revolutionary cases; ordinary criminal cases carrying a sentence of life imprisonment or the death penalty; criminal cases involving crimes committed by foreigners or violations of the legitimate rights of foreigners by Chinese citizens; criminal cases and civil cases which have a major impact in their own jurisdictions and are referred to them by the people's lower courts on first instance; cases of appealing and judgements and decisions of the people's lower courts, as well as cases against which an appeal has been lodged by the Office of the Procurator-General in accordance with the procedure for supervising court decisions.

25. The people's higher courts examine important criminal cases which concern a whole province (a municipality which comes directly under the central authority or an autonomous region) and civil cases on first instance that have a major impact in their own jurisdictions, cases which are referred to them on first instance by the people's lower courts, cases of appealing against and challenging judgements and decisions of the people's lower courts, as well as cases against which an appeal has been lodged by the Office of the Procurator-General in accordance with the procedure for monitoring court decisions.

26. The People's Supreme Court examines the major national criminal cases which involve the entire country and any civil cases which have serious repercussions at the national level, as well as any cases it considers that it

must rule on first instance, cases appealing or challenging decisions of the people's higher courts, and the people's special courts and the cases of appeal lodged by the People's Supreme Procuratorate, in accordance with the procedure for monitoring court decisions. It also gives the legal interpretations of specific problems of enforcement of the laws and rules and regulations during proceedings.

27. Under the organizational law on the people's procuratorates of the People's Republic of China, the people's procuratorates at the various levels have, inter alia, the following functions:

1. To institute proceedings in cases of high treason, attempts to dismember the country and important criminal cases which cause serious damage to the policy, laws, ordinances and decrees of the State;

2. To examine any criminal cases brought directly before them;

3. To investigate any cases which have been the subject of an inquiry by the public security services, to decide whether an arrest should be made, to institute or discontinue proceedings, to verify the legality of an inquiry conducted by the public security services;

4. To conduct public prosecution proceedings once they have been initiated; to verify the legality of the decisions of the people's courts;

5. To verify the legality of the execution of judgements and decisions in criminal cases and of the activities in the prisons and establishments of reform through labour;

6. To investigate the legal responsibility of the public officials in cases of violation of democratic rights, the rights of the individual and other citizens' rights.

28. In China, judges and procurators are appointed under very strict rules and only after a review of their qualifications. The judges of the courts at the various levels include the president of the court, the vice-president of the court, members of the judicial commission, the divisional president, the divisional vice-president, the judge and the associate judge. The Office of the Public Prosecutor, at the different levels of jurisdiction, includes in particular the following magistrates: the procurator-general, the advocate-general, members of the procuratorate commission, the procurator and the associate procurator. The president of the People's Supreme Court and the procurator-general of the People's Supreme Procuratorate are elected by the People's National Congress. All the other judges in these two jurisdictions are appointed by the Standing Committee of the People's National Congress. The presidents of the people's local courts at the various levels are elected by the people's congresses at the same levels. The procurators-general of the people's local procuratorates at the various levels are elected by the people's local congresses at the same levels and approved by the standing committee of the people's congress at the immediately higher level on the proposal of the procurator-general of the procuratorate at that level. The

other judges and magistrates of the Office of the Procurator-General are appointed by the standing committees of the people's congresses at the various levels.

29. The public security services are the administrative organs of the State responsible for maintaining law and order. As organs of the Chinese State, they are a part of the administration, but they obey the law and perform certain functions in criminal cases: in criminal proceedings, they conduct the investigation and the pre-trial proceedings, place persons in police custody, carry out arrests, searches and other criminal law enforcement measures, in conformity with the law. The public security services perform their judicial functions in keeping with the provisions of the Criminal Procedure Law (Code of Criminal Procedure) and must also abide by the regulations on arrest and police custody, the regulations on the administration of public security and penalties as well as the rules of conduct for police officers and a whole set of laws, rules and regulations.

30. The people's courts, people's procuratorates and public security services are vested with separate powers; during criminal proceedings, discharge their respective functions in accordance with the law and may not substitute for one another. Article 3 of the Code of Criminal Procedure provides: "The public security services are responsible for investigation, police custody and pre-trial proceedings in criminal cases. The people's procuratorates are responsible for approving arrests, examining cases (especially ordering investigations) and initiating public prosecution proceedings. The people's courts alone are competent to pass judgement." In addition, article 5 states that: "In conducting criminal proceedings, the people's courts, the people's procuratorates and the public security services shall divide the work in accordance with their responsibilities and coordinate their activities and monitor one another in order to guarantee correct and effective application of the law."

31. In order to guarantee the independence of the courts and the procuratorates, article 126 of the Constitution states: "The people's courts shall, in accordance with law, exercise judicial power independently and they are not subject to interference from administrative organs, social groups or individuals." Article 131 of the Constitution states: "The people's procuratorates shall, in accordance with the law, exercise prosecution power independently and they are not subject to interference from administrative organs, social groups or individuals." In order to ensure that the provisions of the Constitution are in fact applied, article 4 of the organizational law on the people's courts provides: "The people's courts shall make decisions independently, in accordance with the law, and they are not subject to interference from administrative organs, social groups or individuals." Under the organizational law on the people's procuratorates, the latter exercise their right to prosecute independently, apply the law equally to all citizens, and may not grant any privilege and are not subject to any interference from administrative organs, social groups or individuals.

32. The organs of the administration of justice are a part of the State administration. They consist of the judicial services which come under the State Council as well as the departments, offices and other local judicial bodies at the various levels. They exercise administrative powers in judicial

matters and are responsible, inter alia, for the administration of the prisons, rehabilitation and re-education of offenders through work; they supervise the activities of lawyers and notaries; they direct and manage the activities of court officers and the people's arbitration commissions; they administer the teaching of law in political science and legal institutes and institutions of higher education; they direct and manage legal training, as well as the publication of legal journals, periodicals and books.

D. Criminal Procedure

33. Under the Code of Criminal Procedure, the criminal procedure consists of five stages: the institution of criminal proceedings, the investigation, the initiation of public prosecution, the sentencing (in the court of first instance, in the court of second instance, review of death sentences and monitoring court decisions) and the execution of the sentence.

34. Under the Code of Criminal Procedure, the public security services, the people's procuratorates and the people's courts must promptly examine, in matters falling within their jurisdiction, the material on complaints, accusations or voluntary surrenders and institute any criminal proceedings they deem necessary in order to determine criminal responsibility for criminal offences. If they are convinced that there have been no criminal acts or if they believe that the acts are obviously minor and do not necessitate an investigation into criminal responsibility, they shall not institute any criminal proceedings and shall inform the plaintiff of the reasons for their action. If the plaintiff does not agree, he may apply for a review of the case.

35. The investigation specifies the procedure to be followed, in accordance with the law, by the public security services (including the State security organs) and the people's procuratorates in seeking the evidence in a criminal case. After completing its investigation, the public security service in charge of a case shall draft an opinion recommending prosecution or non-suit. It shall transmit this opinion, together with the material and evidence relevant to the case, to the people's procuratorate for review and a decision. After examination of the file transmitted to it by the public security service or after conducting its own investigation, the people's procuratorate shall decide either to initiate a public prosecution, or to exempt the accused from prosecution, or not to prosecute or to close the case.

36. After a people's court has conducted a review of a criminal case in which a public prosecution has been initiated, where the facts of the crime are obvious and the evidence is complete, it shall decide to hold a hearing and rule on the case. Where there is no need for a criminal sentence, the court may demand that the people's procuratorate withdraw its prosecution.

37. In the event of an appeal or protest against a sentence handed down by a court of first instance, the people's court of second instance, after hearing the case shall, depending on the circumstances, rule as follows: (1) if the initial verdict is not vitiated by errors of fact or law and the verdict is appropriate, it shall reject the appeal or protest and uphold the original verdict; (2) if the initial verdict is vitiated not by errors of fact but by errors of law or if the verdict is inappropriate, it shall revise the verdict;

(3) if the facts invoked in the initial verdict are obscure or the evidence insufficient, it may revise the verdict after clarifying the facts. It may also quash the initial verdict and refer the case back to the people's court for a new ruling.

38. Apart from death sentences which it imposes itself, the People's Supreme Court must approve death sentences imposed by other courts. When a people's intermediate court imposes a death sentence on first instance and the defendant does not appeal, the case shall be submitted to the People's Supreme Court for approval after review by a people's higher court. If a people's higher court does not agree with a death sentence, it may review the case and rule on it or refer it back for a new decision. All cases in which the death sentence has been imposed on first instance by a people's higher court and in which the defendant has not appealed, and all cases in which the death sentence has been imposed on second instance shall be submitted to the People's Supreme Court for approval. In some cases where the law stipulates the death penalty, the People's Supreme Court, where necessary, authorizes the people's higher courts to exercise the right of approval.

39. Parties, victims and the members of their families or any other citizens may, in accordance with the procedure for monitoring court decisions, present petitions against judgements or enforceable decisions to the people's courts or to the people's procuratorates but the execution of such judgements or decisions cannot be suspended. In conformity with the procedure of monitoring court decisions, the People's Supreme Procuratorate and the people's higher procuratorates have the right to challenge the verdicts and enforceable decisions of the people's lower courts if they discover that they contain obvious errors. Presidents of people's courts at the various levels or the People's Supreme Procuratorate or people's higher procuratorates who discover any obvious errors in the verdicts or enforceable decisions of their own or lower courts, may, refer the case to the Judicial Committee or examine it and rule on it or order a review. A new college had been set up for the reconsideration of cases, in accordance with the procedure for monitoring court decisions.

40. Citizens have the right to lodge complaints against public security services or procuratorates in cases of illegal acts. Under the relevant provisions of the Code of Criminal Procedure, the staff of the judicial services, procuratorates and investigating bodies must, in accordance with legally prescribed procedures, gather various types of evidence that can establish the defendant's guilt or innocence as well as the gravity of the offence. It is strictly forbidden to extort confessions by torture or to obtain evidence by threats, promises or other unlawful means. In accordance with the law, the criminal responsibility of any State official who extorts confessions by torture is investigated, because this constitutes a crime.

E. Categories of penalty stipulated by the law

41. Depending on the nature of the illegal act and the legal responsibility, the law provides for penal sanctions, civil sanctions and administrative sanctions.

42. The penal sanctions indicate the penalties imposed by the people's courts on criminal offenders who have broken the Criminal Law (Penal Code). China's Penal Code provides for two categories of penalties: principal penalties and accessory penalties. The principal penalties are probation (a minimum of three months and a maximum of two years, with not more than three years in the event of multiple offences); detention (a minimum of 15 days and a maximum of 6 months, with not more than 1 year in the event of multiple offences); fixed-term imprisonment (a minimum of 6 months and a maximum of 15 years, with not more than 20 years in the event of multiple offences); life imprisonment; the death penalty (including the death penalty accompanied by a two-year stay of execution: the fate of the convicted person depends on his behaviour during his two years of reform through labour). The accessory penalties are fines, deprivation of political rights and confiscation of property. The accessory penalties may also be imposed independently.

43. The civil sanctions indicate the penalties imposed under the law by the people's courts on persons with civil liability for serious infringements of the rules of civil law. The General Principles of Civil Law of the People's Republic of China provide for five categories of civil sanction: a warning; an obligation to repent; confiscation of property obtained through illegal activities and illegal gains; fines and detention.

44. The administrative sanctions are disciplinary measures taken under the law by administrative bodies against citizens, legal persons or other organizations which have contravened the laws or administrative regulations without having committed a crime. The law and regulations determine which administrative body is competent to exercise disciplinary powers. The administrative sanctions imposed under the law by administrative bodies in the event of a breach of administrative regulations consist essentially of imposing an obligation of some kind on an offender, of restricting some of his rights or depriving him of them. The principal administrative sanctions are: censure, which is an administrative sanction in the form of a warning and affects a person's reputation (reprimand, circular, etc.); penalties in regard to property, which deprive a person of the right of ownership (fines, confiscation of illegal gains, etc.); penalties which restrict or deny freedom of action (withdrawal of a driver's licence, confiscation of a professional permit, etc.); personal penalties which restrict personal freedom (administrative detention, re-education through labour, etc.).

45. Re-education through labour is one kind of administrative penalty. It is applied in accordance with the Decision concerning Re-education Through Labour, adopted in 1957 by the Standing Committee of the People's National Congress, and other legal provisions. Throughout the country, the governments of the various provinces, autonomous regions, municipalities directly under the central government and large or medium-sized cities each set up an administrative committee on re-education through labour. The people's procuratorates exercise supervision over such re-education activities. The relevant provisions state that re-education through labour is to be received only by individuals over 16 years of age who, in large or medium-sized cities, constitute a threat to public security and refuse to mend their ways despite repeated warnings, or who have committed minor offences not qualifying for penal sanctions under the conditions established by the legal and regulatory

provisions in this field. The law establishes a procedure and system of rigorous supervision to prevent erroneous decisions concerning re-education through labour.

46. When the administrative committee on re-education through labour decides, in accordance with the provisions on the personnel engaged in re-education through labour, to impose a fixed-term penalty of between one and three years, the person concerned or his family is entitled to know the reasons for and length of such penalty. If the person concerned disagrees with the decision, he may lodge an appeal with the administrative committee on re-education through labour or, under the provisions of the Administrative Procedure Law (Code of Administrative Procedure), bring proceedings in the people's court. If the re-education establishment believes that the person concerned does not meet all the conditions required or that the offence calls for a criminal sentence, it may request the administrative committee on re-education through labour to review its decision.

47. Apart from those measures of re-education which limit some of their rights under the applicable regulations and which they are required to observe, persons undergoing re-education through labour continue to enjoy their general civil rights under the Constitution and the law. For example, they are not deprived of their political rights and may exercise their right to vote, in accordance with the law; they enjoy freedom of correspondence and are entitled to holiday leave and rest. While serving their sentence, they may meet their relatives and are also allowed to take leave or holidays to visit their families. In the event of good behaviour, the length of the re-education may be reduced or the term brought forward in accordance with the law.

48. Re-education through labour differs from reform through labour, which is a criminal penalty imposed on an offender sentenced to a term of imprisonment on the basis of the applicable legal procedure. The public security services first conduct an inquiry, the procurator brings a prosecution and the people's court delivers a judgement, which is then executed by the services responsible for reform through labour. Re-education through labour is an administrative measure of compulsory re-education for persons who infringe the law when no investigation of their criminal responsibility is required. The basis of reform through labour lies in the Penal Code, the Code of Criminal Procedure and the Regulations on Reform Through Labour. Re-education through labour is based on the Decision concerning Re-education Through Labour and the Experimental Measures relating to Re-education Through Labour, and is conducted by the services responsible for re-education through labour. The length of reform depends on the judgement of the people's court and the relevant legal provisions, whereas the length of re-education is set at between one and three years.

F. "Crimes of counter-revolution" and "political crimes"

49. The concept of political crime does not exist in China. The "crimes of counter-revolution" referred to in the Criminal Law (Penal Code) are not political crimes but a category of criminal offences. Such crimes against the security of the State are punishable in all countries. Under the Penal Code, all acts endangering the People's Republic of China committed with the goal of

overthrowing the political power of the people's democratic dictatorship and the socialist system are counter-revolutionary crimes. This definition specifies the two essential conditions constituting a counter-revolutionary crime: at the subjective level, a counter-revolutionary goal and, at the objective level, an act which endangers the State. Both conditions must be satisfied; one alone does not suffice.

50. Articles 91 to 102 of the Penal Code list the main crimes of counter-revolution as follows: high treason, plotting to overthrow the Government, instigation of treason or rebellion, defection and treason, espionage, participation in a secret service, assistance to the enemy, organization or direction of a counter-revolutionary group, active participation in a counter-revolutionary group, counter-revolutionary sabotage, incitement of counter-revolutionary propaganda, etc. Corresponding provisions may be found in the criminal laws of many other countries to punish most of the criminal acts prohibited by law in China. The only difference is how the offences are defined.

51. The judicial bodies which try cases of counter-revolution show particular circumspection. Under the Code of Criminal Procedure, the people's intermediate courts have jurisdiction as courts of first instance over counter-revolutionary cases. When adjudicating such cases, the people's courts strictly abide by the principles and procedure of the Code of Criminal Procedure, basing themselves on the actual facts and referring to the law in order to render an objective and impartial judgment. During the trial, the defendant, like any other defendant in a criminal case, enjoys all the rights established in the Code of Criminal Procedure Law, including the right to request the withdrawal of adjudication procuratorial or investigation personnel, to be defended, to enter an appeal, etc.

52. As with penalties for other offenders, the penalties imposed on counter-revolutionaries depend on the facts, nature and circumstances of the crime and the provisions of the Penal Code relating to the various offences against society. When serving their sentences, perpetrators of counter-revolutionary crimes are treated by the law like other criminals and are not subject to discriminatory measures or additional disciplinary measures. Furthermore, their term of labour may be shorter, since they spend more time studying, reading appropriate books and newspapers, attending courses and participating in meetings and other activities so that they realize and regret the harm that their criminal acts have caused to the daily life and orderly work of the State and the people. Like other criminals, perpetrators of counter-revolutionary crimes work while in detention, a practice which does not constitute a violation of the human rights principles of the United Nations. Moreover, as workers, they receive appropriate occupational protection and health care. Safety, hygiene, ventilation, lighting and other arrangements in reform-through-labour establishments must comply with precise standards laid down by the State. The statistics show that in China, at the end of 1991, there were 4,329 perpetrators of counter-revolutionary crimes, or 3.58 per thousand of the total prison population. Under the laws and regulations governing prison administration, persons convicted of counter-revolutionary crimes are held in prison, all the inmates being distributed between the various prisons.

G. System for monitoring law enforcement

53. Law enforcement is monitored by the organs of State power, by the judicial and administrative authorities and by society.

54. The monitoring by the organs of State power relates to the implementation of the Constitution and laws by the People's National Congress and its Standing Committee. The people's local congresses at the various levels and the standing committees of the people's congress at and above the district level ensure observance and implementation of the Constitution, laws, administrative regulations and local regulations in their respective administrative areas. Monitoring of the implementation of the Constitution and laws comprises two aspects: first, examination and monitoring of the conformity of laws, administrative regulations, local regulations and other regulations with the principles of the Constitution and the relevant provisions; second, verification of the constitutionality of the activities of all State organs, social groups and citizens. The People's National Congress has the power to alter or annul any law or regulation contrary to the Constitution, including inappropriate decisions taken by its Standing Committee. The Standing Committee of the People's National Congress has the power to annul administrative regulations, decisions or orders issued by the State Council that are contrary to the Constitution or laws as well as local regulations or decisions issued by the government organs of the provinces, autonomous regions or municipalities directly under the central Government that are contrary to the Constitution, laws or administrative regulations. The people's local congresses at and above the district level have the power to annul inappropriate decisions or orders issued by people's governments at the same level or inappropriate decisions issued by people's congresses at the level immediately below.

55. Monitoring by the judicial authorities is of two kinds: monitoring judicial decisions and monitoring of the procuratorate. Judicial decisions are monitored in the following manner: if the Supreme People's Court discovers that judgements or orders of the people's courts at various levels that have already become effective contain actual errors or if the people's courts at higher levels discover the same to be true of such judgements or orders of the people's courts at lower levels, they have the right to investigate and adjudicate the cases to direct the people's courts at lower levels to readjudicate them. If presidents of the people's courts at the various levels discover that the determination of facts or application of the law in judgements or orders of their court contain actual errors, they have the power to send the case to the Adjudication Committee for it to decide on the matter. People's higher courts monitor the judicial activities of people's lower courts.

56. As explained in some detail above, the people's procuratorates monitor the enforcement of the law by exercising their power of prosecution. It should be added, however, that they do not perform this role in all instances of enforcement of the law; they do so only in those cases prescribed by law. Monitoring of State bodies and their officials by the people's procuratorates at the various levels is generally limited to prosecution with a view to

determining criminal responsibility in cases of grave violation of the law. Another body has jurisdiction if the case involves a minor infraction and the unlawful act does not constitute an offence.

57. Monitoring by administrative organs means monitoring by the administrative organs at higher levels of the lawful application and observance of statutes and regulations by administrative organs at the lower levels, as well as monitoring by the administrative organs of the lawful application and observance of laws and regulations by enterprises, establishments and citizens. Under the Constitution, the State Council has the power to alter or annul inappropriate orders, directives or regulations issued by the ministries or commission. The people's local governments at and above the district level have the power to alter or annul inappropriate decisions of bodies accountable to them or of people's governments at lower levels. The relevant administrative organ is empowered to impose the necessary administrative sanctions on workers, enterprises or establishments and citizens contravening the statutes and rules of administrative law.

58. In addition, the State has, set up special inspection machinery for strict, effective and prompt supervision of the administration. It is the government supervisory bodies which oversee and examine the implementation of laws, regulations, decisions and directives issued by the State administrative bodies and their officials. Their function is to deal with accusations or complaints of contraventions of the law or regulations by the above-mentioned administrative organs or their personnel, and to make inquiries in accordance with the law. From the findings of such inquiries, they put forward suggestions to the administrative body concerned or impose administrative sanctions (warning, reprimand, demotion, dismissal, etc.). The inspection services differ from the administrative tribunals instituted by the people's courts under the Code of Administrative Procedure. The administrative tribunals have jurisdiction to deal particularly with cases under administrative law brought by citizens, legal persons or other organizations when they believe that their legitimate rights and interests have been infringed by a particular administrative act of administrative organs or their officials.

59. Monitoring by society means monitoring in which the masses take an active part, in a variety of forms and on a vast scale, with respect to law enforcement and the conduct of public affairs by officials. It covers various situations as follows:

1. Monitoring by social organizations: the Chinese People's Political Consultative Conference oversees the affairs of State and implementation of the Constitution and laws by means of consultations, discussions, criticism and proposals. The deputies to the people's congresses at the various levels and the members of the Conference from time to time inspect prisons and institutions for reform through labour to examine how the law is being implemented. In 1991, for example, more than 30 members of the Chinese People's Political Consultative Conference and the Political Consultative Conference of the City of Beijing made four successive inspections of Beijing Prison No. 1 to examine the conditions in which the law was being applied there;

2. Monitoring by public opinion: in the newspapers, on the radio and by other means of communication, the masses are able to denounce various contraventions of the laws and regulations, and support and supervise the judicial organs which impose sanctions in accordance with the law for various criminal acts;

3. Monitoring by the masses: this is done directly by the masses, particularly with regard to legislation, law enforcement and the system of justice. The State guarantees and facilitates this direct monitoring by, for example, establishing reception centres for visitors, offices for mail and public visits, special telephone lines, and so on.

H. International treaties and domestic law

60. China has always recognized and observed the Charter of the United Nations and the goal and principle of promoting human rights. It appreciates and supports United Nations efforts to encourage universal respect for human rights and fundamental freedoms. It has participated actively in the drafting and elaboration of international human rights instruments within the framework of the United Nations system. Since 1980, it has signed, ratified and acceded to a series of international human rights instruments. They include the International Convention on the Suppression and Punishment of the Crime of Apartheid, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention relating to the Status of Refugees and the Convention on the Rights of the Child.

61. In the Chinese legal system, treaties and major international agreements concluded or acceded to by China must be ratified by the supreme organs of power. Upon ratification, they enter into force in China, which then assumes the obligations arising therefrom. In general, when certain provisions of an international instrument concluded or acceded to by China are not compatible with domestic law, a process of harmonization is necessary. The provisions of the international treaty prevail over domestic law, except where China has entered reservations to the treaty at the time of ratification or accession. Implementation of the Convention against Torture in China follows this principle.

62. China regards torture as a serious criminal act. First of all, acts of torture violate the provisions of articles 37 to 41 of the Constitution of the People's Republic of China relating to the inviolability of the rights of the person and of citizens. Under the Constitution, no citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security service. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited. The personal dignity of citizens is inviolable. Insult, libel and false charges or accusations directed against citizens by any means is prohibited. Furthermore, acts of torture as

defined by article 1 of the Convention are treated by the Constitution and other relevant laws as serious criminal acts and, as such, are prohibited and constitute punishable offences.

63. Since the text of the Convention does not specify what penal sanctions are applicable to criminal acts of torture, the judicial organs which prosecute and adjudicate cases of torture rely mainly on the provisions of domestic law in determining guilt and setting penalties. Although there is still no specific definition of the term "torture" in Chinese law, this does not prevent China from giving effect to the provisions and requirements of the Convention.

PART II: IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION

Article 2

64. Over the years and more particularly since acceding to the Convention, China has taken effective legislative, administrative, judicial and other measures with a view to strictly prohibiting all acts of torture and guaranteeing the inviolability of the rights of the individual and the democratic rights of citizens.

65. The Chinese Constitution and laws contain explicit provisions relating to protection of the rights of the individual and of the citizen. Thus, articles 37 to 41 of the Constitution set out provisions concerning the inviolability of the rights of the individual and of the citizen. Article 6 of the Organizational Law on the People's Procuratorates of the People's Republic of China furthermore stipulates that: "People's procuratorates shall, in accordance with the law, protect the right of citizens to lodge complaints against State officials who break the law and shall investigate the legal responsibility of those persons who infringe other citizens' rights of the person and their democratic and other rights". Pursuant to this provision, the State has established departments in charge of disciplinary matters in the people's procuratorates at the various levels, with responsibility for investigating infringements of citizens' rights by State officials.

66. In order to protect citizens against any unlawful infringement of their personal integrity and to prevent all acts of torture, the State, in many of its statutes, clearly stipulates that no citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and that arrests must be made by a public security service. To guarantee proper implementation of these enforcement measures and ensure that innocent persons do not suffer injury, the Constitution and the law empower the procuratorates to examine and approve arrests. Under the law, the public security services have the power to hold someone in police custody. If a public security service deems it necessary to arrest someone held in police custody, it shall, within three days, submit a request to the people's procuratorate for examination and approval. The people's procuratorate shall decide whether or not to approve the arrest within three days after receiving the said request. If the people's procuratorate disapproves the arrest, the public security service shall, upon receiving notification of the procuratorate's decision, release the person in custody and issue him a release certificate. If the public security service or the people's procuratorate fails to act in accordance with these provisions, the person in police custody and his family shall have the right to demand his release, and the public security service or the people's procuratorate shall immediately release him.

67. To prevent violence, physical or verbal, corporal punishment and ill-treatment and also to eliminate acts of torture as far as possible, the services responsible for public security verify not only the working methods and the procedures followed by their agents, but also whether or not confessions have been extracted by means of torture. The public security services have established, at all levels, enquiry services and information

centres responsible for discipline, supervision and compliance with the law, which handle complaints and accusations relating to acts of torture or physical abuse and make thorough enquiries into cases of extorting confessions under torture and other violations of the rights of the individual and the citizen.

68. To teach citizens to protect their own rights and interests legally and develop their knowledge of the legal system, the Chinese Government attaches great importance to publicity of the rudiments of law. In 1985, it decided to put into effect, for a period of five years and country-wide, a first large-scale study programme on the fundamentals of law, covering the texts of the Constitution, the Penal Code, the Code of Criminal Procedure, the General Rules of Civil Law, the Code of Civil Procedure and other basic laws. The statistics indicate that, by the end of 1990, 700 million citizens out of the 750 million concerned had received basic instruction in this field. Furthermore, to consolidate and build on the work carried out during these first five years, the Chinese Government decided to pursue the legal training and awareness programme for citizens for a further five years after 1991.

69. A large number of different methods are being used to provide instruction in the law. From the central to the local levels, the various governmental services first of all established legal training bodies and recruited instructors. The instruction itself takes various forms: reports, travelling conferences, photographic exhibitions, artistic and literary productions, radio broadcasts, films and television programmes. Legal training courses have been established in institutions of primary and secondary education. Members of neighbourhood organizations visit every home to discuss these subjects with the elderly and the sick.

70. In terms of content, the training programme not only focuses on domestic law but also provides information to interested persons on the main legal instruments adopted by the United Nations, including the Convention against Torture. Law enforcement officials, including penitentiary personnel, have been asked to study carefully and familiarize themselves with the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials and the various documents containing guidelines and mandatory provisions on human rights adopted by the relevant United Nations forums.

71. In China, an order from a superior officer or a public authority cannot be invoked to justify torture. Criminal acts, including the use of torture, are punishable under the Penal Code and the relevant legal provisions. An order from a superior officer or a public authority in no way provides immunity from the requirements of the law.

Article 3

72. Under the Constitution and the relevant laws, the State protects the legitimate rights and interests of foreigners living in Chinese territory. Their personal freedom is inviolable. No foreign national may be arrested except with the approval or by decision of a people's procuratorate or by the decision of a people's court, and arrests must be made by a public security or State security organ. With the approval of the Chinese Government, any

foreigner requesting asylum for political reasons may be granted asylum. Clearly, foreigners living in Chinese territory are required to abide by Chinese laws and the applicable provisions. If an offence is committed, the competent administrative authority may impose an administrative penalty, depending on the nature of the offence or criminal act, including limitation of the right to leave, or expulsion from, the territory. A people's court may also deliver a simple sentence or combine it with expulsion.

73. In line with the policy of reforms and openness, China is cooperating more and more with other countries in the judicial field. Although it has not yet drafted a law or regulations on extradition, it cooperates with a number of countries, and more particularly with neighbouring countries, in matters relating to criminal justice, providing in particular for the extradition or refoulement of offenders. In practice, judicial assistance between China and other countries with regard to the extradition or refoulement of criminals is generally based on reciprocity. Furthermore, when deciding on the appropriateness of extradition or refoulement, the judicial authorities consider carefully whether such a measure is compatible with the general principles of international law and the international obligations undertaken by China. If it proves to be inconsistent with those principles and obligations, proceedings are brought against the person whose crime has given rise to such a request, and judgement is rendered on the basis of the applicable Chinese laws.

Article 4

74. With regard to the sanctions applicable to crimes of torture, articles 136, 143, 144 and 189 of the Penal Code of the People's Republic of China punish, respectively, the use of torture to extort a confession, unlawful detention, unlawful surveillance as well as corporal punishment and other forms of ill-treatment committed by penitentiary personnel. The Code of Criminal Procedure of the People's Republic of China, the Regulations on the Administration of Public Security and Penalties of the People's Republic of China, the Regulations on Arrest and Detention of the People's Republic of China and other texts specify how to prevent and prohibit torture in the judicial process. The Code of Administrative Procedure, promulgated by the State in 1990, guarantees direct and effective legal remedies for any citizen who requests legal protection following infringement of his rights by a State body or by the personnel of such a body.

75. The law formally prohibits corporal punishment and the judicial authorities impose penalties, in proportion to the seriousness of the acts, on State officials who have inflicted such punishment, whether clearly or in disguised form, on accused persons or any other person serving a term of imprisonment, for the purpose of extorting confessions. If the act of torture does not result in injury or disability, the maximum period of imprisonment or criminal detention is three years. If injury or disability is caused, the torturer is charged with striking and wounding and becomes liable to a heavier penalty of 3 to 7 years' imprisonment. In the event of death, the prison term shall be no less than 7 years and may even be life imprisonment.

76. The term "accused", as used above, means anyone suspected of having committed an offence or any defendant in a criminal case subject of

investigation or judicial proceedings. The term "corporal punishment" means the use of any method or instrument of torture which causes bodily, muscular or organic suffering, for example by binding someone hand and foot, hanging him up to beat him, punching or kicking him, etc. The term "disguised corporal punishment" means physical or mental punishment including, for example, making a person stand for long periods, exposing him to cold, hunger or deprivation of sleep.

77. The term "mental torture" does not exist in Chinese law. If mental suffering is inflicted on a person by means of torture, the judicial system punishes those responsible on the basis of the penalties for cases of physical torture involving organic injury. Some forms of torture described as "disguised corporal punishment", such as obliging a person to stay out in the cold or depriving him of food or sleep for long periods, are treated as offences under the Penal Code and are therefore liable to punishment.

78. Unlawful arrest and detention or use of any other coercive means of depriving an individual of his personal freedom come under the heading "unlawful detention" in the Penal Code. Article 43 of the Code stipulates that "unlawful detention of a person or the unlawful deprivation of his personal freedom by any other means shall be strictly prohibited. An offender shall be sentenced to not more than 3 years of fixed-term imprisonment, criminal detention or deprivation of political rights. In circumstances where battery or humilation has occurred, the offender shall be given a heavier punishment. Whoever commits the crime mentioned in the preceding paragraph and causes serious bodily injury shall be sentenced to fixed-term imprisonment of not less than 3 years and not more than 10 years; if he causes a person's death, he shall be sentenced to fixed-term imprisonment of not less than 7 years". It should be pointed out here that the term "unlawful detention" has two meanings in law: first, the detention by an unauthorized person and, second, detention by a person who is authorized by law but who does not bring such detention to the notice of the legal services for approval or who does not comply with the legal procedure, abuses his power of detention and thus violates the personal freedom of the individual concerned.

79. The Penal Code states that anyone who unlawfully subjects another person to public surveillance or a body search or a search of his residence or unlawfully enters another person's residence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

80. The penalty for the offence of torture is decided by the people's court in conformity with the principles set out in criminal law. Article 57 of the Penal Code states: "In a decision on the punishment of an offender, the sentence shall be imposed on the basis of the facts, nature and circumstances of the crime and the degree of harm to society, in accordance with the relevant stipulations of this Law.".

81. A series of provisions stipulate heavier criminal penalties for a principal offender (Penal Code, art. 23), an instigator of an offence (Penal Code, art. 26), a recidivist (Penal Code, art. 61), State officials who extort a confession by torture and anyone who causes a person injury or disability through corporal punishment (Penal Code, art. 136), or in cases

where the unlawful detention of a person or the unlawful deprivation of his freedom by any other means includes beating or humiliation (Penal Code, art. 143).

Article 5

82. Article 3 of the Penal Code lays down rules for jurisdiction over offences referred to in article 4 of the Convention. It states: "This Law is applicable to all who commit crimes within the territory of the People's Republic of China except as specially stipulated by law. This Law is also applicable to all who commit crimes aboard a ship or aircraft of the People's Republic of China. When either the act or consequence of a crime takes place within the territory of the People's Republic of China, a crime is to be deemed to have been committed within the territory of the People's Republic of China.".

83. The term "territory" as used in article 3 of the Penal Code means all the regions within the frontiers of the People's Republic of China. The term "crime" means any criminal act or any consequence of such an act occurring within the territory of the People's Republic of China. The expression "except as specially stipulated by law" is meant to apply primarily to the specific rules applicable to foreign nationals enjoying diplomatic privileges or immunities. For example, article 8 of the Penal Code states that "the criminal responsibility of any foreigner who enjoys diplomatic privileges and immunity shall be resolved through diplomatic channels". That expression also covers the specific rules applicable in the territories of national minorities. Article 80 of the Penal Code stipulates that, "In situations where the autonomous areas inhabited by ethnic groups cannot completely apply the stipulations of this Law, the organs of State power of the autonomous regions or of the provinces may formulate alternative or supplementary provisions based on the political, economic and cultural characteristics of the local ethnic groups and the basic principles of the stipulations of this Law, and these provisions shall enter into effect after they have been submitted to and approved by the Standing Committee of the People's National Congress.". Finally, the expression covers the various provisions contained in the laws adopted by the State subsequent to the enactment of the Penal Code.

84. In 1987, the twenty-first session of the Standing Committee of the Sixth People's National Congress decided that the People's Republic of China shall, under obligations it has assumed in the international treaties it has concluded or acceded to, exercise criminal jurisdiction over offences set out in such treaties.".

Article 6

85. In China, the public security services are responsible for police custody and arrest of all accused persons. Article 43 of the Code of Criminal Procedure stipulates that, in holding a person for police custody, a public security service must produce an arrest warrant. A public security officer is bound by law to inform the person of the contents of the warrant. The warrant must include the date of the first day of the police custody and be signed or marked by the person being held. To avoid errors, the law stipulates that

questioning must be conducted within 24 hours after a person has been held. In the event of a mistake, the person must be released immediately and must be issued a release certificate. The person's family or the work unit to which he belongs must be notified of the reasons for and the place of, custody, except in circumstances where such notification would hinder the investigation or there is no way of notifying them.

86. The expression "would hinder the investigation" in the previous paragraph refers to cases where the crime has been committed by more than one person or by a group and where the public security services are holding only one or a few persons and have not yet conducted an inquiry to find the accomplices. It then proves necessary to prevent the accomplices from fleeing, hiding, or destroying or falsifying evidence when they learn that questioning has begun. The expression "there is no way of notifying them" refers to offences committed by a vagrant who refuses to reveal his real name or exact address, to the impossibility of informing anyone or to cases of natural disaster or other instances of force majeure. When the family or work unit has not been notified within 24 hours, the public security officers who have placed the person in custody shall record that fact in the relevant documents, in accordance with regulations, and as soon as the above-mentioned obstacles have been eliminated, immediately inform the family or work unit.

87. The Code of Criminal Procedure stipulates that, when making an arrest, a public security service must produce an arrest warrant. Within 24 hours after an arrest, the family of the arrested person or the unit to which he belongs shall be notified of the reasons for arrest and the place of detention, except in circumstances where such notification would hinder the investigation or there is no way of notifying them. If the offender is a foreigner, the public security service generally notifies the embassy or consular office of his home country through diplomatic channels.

88. By law, the period of detention during the investigation cannot last more than two months. If the case is complex and cannot be settled within that time-limit, the period can be extended for one month on approval by a high-ranking official of the people's procuratorate. In cases of extreme complexity or of exceptional importance, the People's Supreme Court can ask the Standing Committee of the People's Congress to approve a postponement of the judgement.

89. The people's court shall issue a verdict on first instance within one month - extendable to a maximum of one and a half months - after being seized of the proceedings filed by the people's procuratorate. The people's court shall render judgement on second instance within one month - extendable to a maximum of one and a half months - after being seized of an appeal or protest.

Article 7

90. The principle laid down in the Convention whereby acts of torture constituting crimes are punishable either by extradition or by criminal proceedings is in keeping with the principle established by the Chinese system of justice for criminal cases involving foreign nationals. Chinese judicial organs hearing criminal cases that involve foreign nationals also

base themselves on the provisions of the Code of Criminal Procedure and apply the same procedure used for other ordinary criminal offences.

91. At criminal proceedings, all defendants enjoy the rights conferred by law, such as the right to a defence, the right to dignity and protection of the individual, the right to the inviolability of legitimate property, the right to file complaints and all other citizen's rights set forth by law. A defendant may defend himself, but he may also appoint a lawyer, a member of his family or any other citizen to do so. When a procurator institutes public proceedings in court and the defendant has appointed no one to defend him, the people's procuratorate can also assign him counsel. During the proceedings, the defendant can impugn his counsel and appoint another. After deciding to institute proceedings, the people's court sends the defendant a copy of the charges, no later than seven days before the start of the hearing, to inform him of the offence with which he is charged and the reasons for the charge and in order to give him time to prepare his defence and to contact his lawyer.

92. A defendant who disagrees with the judgement or decision handed down on first instance by the people's court may lodge an appeal with the people's court at the higher level. The higher level court cannot increase the sentence already pronounced. In the event of disagreement with an enforceable judgement or decision, the defendant can file a petition with the people's court or the people's procuratorate having jurisdiction. In 1991, the people's courts dealt with over 40,000 such petitions.

93. Under all circumstances, offenders have the right to dignity and protection of their person. They may file complaints against prison staff who extort confessions by torture, subject them to corporal punishment or other ill-treatment or commit other unlawful acts, and file proceedings with the people's procuratorate, the people's court, the people's government or other bodies. If they have not been deprived of political rights, they may exercise their right to vote in conformity with the law. Whether incarcerated in prisons or reform-through-labour camps, they have the right to make proposals for rationalization in the fields of administration, education, productive work, culture and entertainment and hygiene.

94. Detainees have the right to a normal life. The State guarantees them food, clothing, accommodation and the other basic necessities of life. Every detainee has the right to at least five m^2 of space, and his cell should as far as possible be well-built, clean, heated and ventilated. According to statistics, in 1990 each prisoner consumed an average of 22.75 kg of cereals, 20-25 kg of vegetables and an appropriate quantity of pork, beef, mutton and fish, poultry, eggs and pulses. Prisoners had a daily food ration of 2,952 calories and their subsistence costs averaged approximately 650 yuan for the entire country, which indicated a standard of living close to that of the other inhabitants.

95. Detainees have the right to health. They enjoy free medical care, annual medical examinations and appropriate medical treatment in the event of illness. In cases of serious illness, the law authorizes release on bail on medical grounds. Detainees who made use of that right accounted for 1.91 per cent of the prison population in 1990 and 1.94 per cent in 1991. Pregnant detainees and those breast-feeding their babies receive treatment

outside the prison. When a prisoner contracts a disease that is difficult to treat, the prison or reform-through-labour camp calls in a specialist or sends the prisoner for consultation in a civil hospital. The reform-through-labour system currently has a medical and health care network at three levels comprising central hospitals, which are branches of the provincial reform-through-labour offices, the hospitals in the various reform-through-labour camps and prisons and the local infirmaries, i.e. a total of 2,944 health establishments. There are 3.54 doctors and 14.8 hospital beds per 1,000 detainees, which are figures higher than the national average.

96. Prisoners have the right to receive training, and the reform-through-labour authorities provide the necessary conditions. Depending on their level of education, prisoners can take regular primary school classes, classes in the first cycle of the secondary level, and, when conditions so permit, classes in the second cycle of secondary level, or even beyond. They can also follow vocational training which will allow them to support themselves once they have returned to civil society. Prisoners can read books and newspapers, listen to the radio, watch television, keep abreast of the major national and international issues and maintain regular contact with outside society.

97. One of the priorities of the reform of teaching in prisons in China is technical education. In 1991, over 560,000 offenders took part in various technical workshops, i.e. 83.18 per cent of the number of prisoners taking technical classes. Over 546,000 detainees in all have met the Ministry of Labour evaluation criteria and received a technical aptitude certificate.

98. The Chinese Government grants juvenile prisoners, women prisoners, older, weak, sick or disabled prisoners and prisoners who belong to national minorities or are nationals of foreign countries, special living conditions and conditions of detention and labour, that are different from those for the other prisoners, in order to take full account of their specific physiological and psychological characteristics, physical condition or particular living habits.

Article 8

99. To date, China has not yet adopted an extradition law, ratified an international extradition treaty, acceded to such a treaty or signed a bilateral extradition treaty with other States. In practice, however, in accordance with the obligations established by the Convention, the judicial bodies treat anyone in Chinese territory who is responsible for a criminal offence in conformity with the relevant legal provisions, if it can be established that the offence is punishable under Chinese criminal law. If conditions so permit, China can extradite an offender to the country in question in order for him to receive the penalty he deserves.

Article 9

100. China has concluded with a few countries treaties on mutual legal assistance in civil, commercial and criminal matters, and they set forth in a clear and detailed manner the procedures and channels used for communicating all evidence necessary for criminal proceedings, information needed for the

legal proceedings and the results of the proceedings instituted. These treaties unquestionably make it possible to institute criminal proceedings in compliance with the obligations set out in the Convention. China will continue in the future to conclude agreements or treaties on mutual legal assistance with other countries and will cooperate as far as possible with all other countries in the prevention of crime.

Article 10

101. To enable State personnel, especially those responsible for law enforcement in the police departments, procuratorates, courts and judicial administration, to study and assimilate the relevant principles and standards of domestic law and the standards developed by the United Nations system, the State has paid special promotion to the drafting and publication of two works, entitled "Survey of International Human Rights Instruments" and "A Survey of United Nations Activities in the Field of Crime Prevention and Selections of Relative Documents". The Ministry of Justice has published documents such as a "Compendium of Prison Regulations in Foreign Countries", which contain some United Nations instruments and the prison administration regulations of over 20 countries. All these publications and documents include the text of the Convention against Torture.

102. In order fully to protect the citizens' personal freedom and prevent affronts to their dignity and all acts of torture, the public security services have prepared, in addition to existing law enforcement measures, a set of administrative regulations for the use of personnel involved in police custody, arrest and preliminary questioning during investigation. The regulations expressly stipulate that the monitoring of judicial activity should focus not only on elucidating the case but also on the methods used to do so and any use of torture in obtaining confessions. Investigatory staff are remunerated only if the investigation has been conducted in conformity with the law and if no use has been made of torture to extort confessions. When a public security officer uses such methods, even if the confessions obtained are decisive in bringing the investigation forward, not only does he receive no remuneration, but an inquiry must be held into his criminal responsibility.

Article 11

103. Each year, Chinese judicial organs try cases of torture; in particular they examine cases of confessions obtained under torture by State officials and corporal punishment and ill-treatment inflicted by prison staff members. The law provides for two investigation and adjudication procedures relating to torture: either the public security services or the procuratorates institute criminal proceedings and start an investigation, then transmit the file to the court for judgement, or the investigation is conducted by the administrative bodies. The administrative bodies come under the jurisdiction of the ministry with supervisory authority for disciplinary affairs. When the inspection services find that a case they are working on might be a criminal case, they transmit it to the judicial organs, which investigate the case in accordance with legal procedure.

104. Under article 164 of the Code of Criminal Procedure, the people's procuratorates exercise supervision to determine whether or not the execution of judgements or orders in criminal cases and the activities of prisons and reform-through-labour establishments are lawful. In order to investigate the conditions of prison accommodation and determine whether sentences are delivered in accordance with the law and whether corporal punishment or other ill-treatment is inflicted on prisoners, the procuratorates at the various levels establish inspection services in the prison establishments. Some of these services are located at all times in prisons, while others use frequent inspections as their method of supervision. Health personnel examine prisoners who have been manhandled by members of the prison staff in violation of the law and discipline. In the event of death, an expert in forensic medicine is appointed by the people's procuratorate or the people's court to conduct an autopsy. Prison regulations also grant prisoners the right to file a complaint for illegal acts committed by members of the prison staff. Such complaints can be received directly by the procuratorate, the department in charge of disciplinary affairs or the competent prison authority.

105. The deputies of the people's assemblies at the various levels and the members of the Political Consultative Conference frequently inspect prisons, monitor the implementation of the laws by prison staff, receive petitions and register prisoners' complaints. These methods make it possible effectively to monitor the implementation of domestic laws and to ensure that those responsible for law enforcement strictly respect the law.

106. If, while the sentence is being served, a prison or reform-through-labour organ decides that there has been an erroneous judgement (for example, an innocent person has been wrongly convicted, the nature of the offence has been inaccurately determined or the penalty is either too severe or too mild), the case may be referred back to the people's procuratorate or the people's court that rendered the original judgement. If an offender files a petition while serving his sentence, the reform-through-labour organ must transmit it to the people's procuratorate or people's court for action.

107. From 1983 to 1987, the procuratorates at the various levels dealt, in accordance with the law, with more than 30,000 offences involving infringement on other citizens' rights of the person and democratic rights, and over 20,000 cases were brought to court. The charges included: extortion of confessions by torture, false charges, sabotage of elections, unlawful detention, unlawful surveillance, unlawful search, unlawful entry into another person's home, reprisals and plots against innocent persons, unlawful deprivation of religious freedom and violation of the customs of national minorities, perjury, tampering with correspondence, loose behaviour for purposes of self-interest, arbitrary release of criminals, bigamy, corporal punishment and other ill-treatment by members of the prison administration. In the overwhelming majority of cases, these criminal acts were not directly connected with law enforcement by State agents but were the result of an insufficient awareness of the law and legality that led ordinary citizens to commit acts in violation of the law.

108. In 1990, the procuratorates received 279 cases of torture from the investigatory service, and 207 of them led to prosecutions. In 1991, these figures increased to 304 and 279 respectively. Some of these cases led to a

decision to dismiss proceedings. Among the individuals prosecuted for acts of torture, some were sentenced to life imprisonment and others to fixed-term imprisonment or criminal detention. The very small number on whom no criminal penalty was imposed were given administrative penalties by the inspection services of the administrative bodies concerned.

109. In order to improve the system of justice, the Chinese Government decided in 1983 to bring the prison administration and other prison establishments under the authority of the Ministry of Justice. This made for major advances: first, the system of justice was improved by strengthening mutual monitoring and interaction among the various judicial bodies; next, tasks were divided more rationally among the judicial bodies; finally, the Ministry of Justice's leading role with respect to the prisons was enhanced. The Ministry of Justice undertook a series of reforms, with a view in particular to turning prisons into schools specializing in the education and rehabilitation of prisoners, ensuring that prisons are run on a scientific basis, in conformity with the law, and are strict but civilized, promoting the standardized work in prisons, urging civilian society to conclude mutual assistance agreements and participate in them on a wide scale, and separating the detention, administration and education functions of prisons. For many years, the percentage of recidivists among persons released after serving their sentence has remained between 6 per cent and 8 per cent.

110. No one in China is tried or detained in secret. By law, hearings of the people's courts are public, with the exception of cases involving State secrets or the private lives of individuals or hearings concerning minors. In all cases (including proceedings in camera), verdicts are handed down publicly. There is no solitary confinement, but male prisoners are separated from female prisoners and adults from minors and accomplices are separated from one another.

111. Prisons and reform-through-labour establishments strictly follow the law and accept only offenders handed over to them under a court judgement. If a required document is missing, or if the judgement is not made enforceable, they refuse to hold the offender.

112. China currently has 684 prisons (including the reform-through-labour camps and the 37 re-education centres for juvenile offenders). The number of prisoners is 1,206,795, i.e. 1 prisoner per 1,000 inhabitants.

Article 12

113. By law, the competent administrative or judicial services receive complaints about acts of torture filed by citizens or prisoners against civil servants. If it is found that such acts have been committed, they are thoroughly dealt with, and in the event of a criminal offence, the people's procuratorates refer the case to the people's courts for adjudication.

114. The people's procuratorates monitor the legality of the proceedings for the purpose of protecting the legitimate rights and interests of prisoners. To that end, the members of the procuratorates are regularly sent to places of detention, not only to inspect prison facilities, prisoners' living conditions and supervisory and punitive activities, not only to make sure they are in

conformity with the law but also to elicit prisoners' comments and register their complaints. Violations of the law are corrected without delay.

Article 13

115. In China, all citizens have the right to file complaints, submit petitions and criticize any State officials for violations of the law, including acts of torture. Any civil servant who abuses his powers or uses his official functions for personal ends by conducting reprisals or plotting against complainants, petitioners or critics is punishable by law. The law protects witnesses and complainants from any ill-treatment or intimidation resulting from their complaints or testimony. The judicial organs judge severely, in accordance with the law, acts of violence, vengeance, intimidation or other ill-treatment committed against witnesses or complainants.

116. Under article 41 of the Constitution, "the State body concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures or retaliate against the citizens making them." Article 146 of the Penal Code stipulates "State officials who abuse their powers and use public office for private gain, engaging in retaliation or plots against complainants, petitioners or critics, are to be sentenced to not more than two years' fixed-term imprisonment or criminal detention; when the circumstances are serious, the sentence is to be not less than two years and not more than seven years of fixed-term imprisonment". The expression "the State body concerned" means the inspection units of the procuratorates, inspection services and administrative bodies and, by analogy, all investigatory bodies.

Article 14

117. Article 41 of the Constitution specifies that "Citizens who have suffered losses as a result of infringement of their civil rights by any State body or official have the right to compensation in accordance with the law". Under articles 2 and 67 of the Code of Administrative Procedure any citizen, legal entity or other organization which feels that its legitimate rights and interests have been undermined by an administrative act of an administrative body or the staff of such a body, may initiate proceedings under the Code in a people's court and demand compensation. Article 68 of the Code clearly stipulates that, if an administrative act carried out by an administrative body or staff of an administrative body undermines the legitimate rights and interests of a citizen, legal entity or other organization or causes it or him harm, the administrative body to which the staff member belongs is required to pay compensation. The damages shall be paid from their budget. The people's governments at the various levels may order the administrative bodies responsible to pay all or part of the compensation. Article 53 of the Code of Criminal Procedure stipulates: "Anyone who has suffered material losses as a result of the defendant's criminal act has the right, during the course of the criminal procedure, to bring a supplementary civil action. When necessary, a people's court may place seals on or confiscate the defendant's property." By law the parties may ask the court to compel the guilty person to fulfil his legal obligation to compensate.

118. The law also guarantees victims of torture the right to obtain moral reparation. Article 32 of the Penal Code provides that, where the circumstances of an offence are minor and do not require a person to be sentenced or punished, exemption from criminal penalty may be granted him, but he may, depending on each case, be reprimanded or ordered to make a statement of repentance or formal apology, or make compensation for losses, or be subjected to administrative sanctions by the competent department.

119. The law does not establish specific criteria for determining the damages payable to the victim; they are set by the competent administrative or judicial bodies, according to the case. To improve the situation in this field, the State is accelerating work on a Code of Compensation of the People's Republic of China. Until the final version of the Code has been published, the amount of compensation payable to the victim of an act of torture will continue to be determined mainly through administrative and judicial channels. The administration may set the amount of damages for medical expenses, loss of income and upkeep in amicable agreement or by order. Compensation is also determined by the courts when dealing with criminal indemnity actions or cases within the purview of administrative procedure.

Article 15

120. Under the Code of Criminal Procedure, the final decision is based on all evidence proving the truth of the facts in the case, such as material and written proof, witnesses' testimony, the victim's statements, the statements and explanations of the accused, expert findings, investigation and inspection reports, etc. Judicial, procuratorial and investigatory personnel must, in accordance with the legally prescribed process, collect various kinds of evidence that can prove the defendant's guilt or innocence and the gravity of his offence. This evidence cannot be taken into account in the final decision until it has been confirmed by the investigation. To that end, the law requires law enforcement personnel to guarantee the necessary conditions for all citizens who are involved in a case or who have information about the circumstances of a case to objectively and fully furnish evidence and, except in special circumstances, they may be brought in to help with the investigation. It is strictly forbidden to use torture to extort confessions or other unlawful methods to collect or falsify evidence; otherwise, the offender incurs legal responsibility and the evidence so obtained is declared null and void.

121. In adjudicating a case, the people's courts give precedence to the evidence and the results of the investigation and research and do not automatically trust oral statements. If the courts have only the defendant's confession and no other evidence, they cannot find him guilty or order a criminal penalty against him. However, if the defendant has not confessed but the evidence is complete and convincing, he can be declared guilty and given a criminal sentence. The law also stipulates that persons suffering from a physical or mental handicap, very young persons and those who cannot distinguish truth from falsehood or express themselves correctly cannot act as witnesses.

122. At the hearing, witnesses' testimony must be subjected to examination and cross-examination by both parties - the procurator and the victim as well as

the defendant and his counsel - and the testimony of all the parties cannot be taken into account in the final decision until it has been heard and verified. If the court notes that testimony has been obtained under torture or that a witness has committed perjury or concealed evidence of guilt, it punishes the offenders in conformity with the law.

Article 16

123. As in most countries, the death penalty remains in force in China, because of the country's situation and the wishes of the people. However, the application of the death penalty is subject by law to extremely strict conditions. Article 43 of the Penal Code stipulates: "The death penalty is to be applied only to criminals who commit the most heinous crimes. If a criminal is sentenced to death and immediate execution is not essential, a two-year stay of execution may be granted, during which time the convicted person shall be subject to reform through labour and his behaviour will be observed." Under article 44 of the Penal Code, "The death penalty is not applicable to persons who have not reached the age of 18 at the time the crime is committed or to women who are pregnant at the time of adjudication."

124. China, which seeks particularly to protect its citizens' right to life and the inviolability of their legitimate rights and interests, is opposed to arbitrary and summary executions. Guarantees of a serious and prudent approach are provided in the Penal Code, under which all death sentences must be approved by the People's Supreme Court, except when the law provides that the Court itself is to adjudicate, or in certain cases by a high-ranking people's court to which it has delegated its power of approval. Cases involving the death penalty are adjudicated on first instance by people's courts at the intermediate level and on second and final instances by people's courts at the highest level. Crimes involving the death sentence that are of great importance at the provincial level are adjudicated on first instance by the highest-ranking people's courts and by the People's Supreme Court on second and final instance. Crimes involving the death penalty that have important repercussions at the national level are adjudicated on first and final instance by the People's Supreme Court.

125. China takes an extremely cautious approach to the enforcement of capital punishment. In that regard, the Code of Criminal Procedure lays down a special supervisory procedure. Death sentences confirmed on second instance are still not enforceable. The law stipulates that the People's Supreme Court or, with the latter's permission, the next highest ranking people's court, is required first of all scrupulously to verify the facts, the evidence, the classification of the crime and the sentence and to ensure that proper judicial procedure has been followed before approving the penalty, thus rendering it enforceable. If between the sentence and its execution it appears that the judgement might be erroneous or if the convict is pregnant, enforcement of the penalty is postponed and the court responsible for approving it, when informed, orders a stay of execution.

126. In accordance with article 45 of the Penal Code, persons sentenced to death are shot.

127. By suspending enforcement of capital punishment it is possible to reduce the number of executions. The aim of this measure is, as far as possible, to reduce the number of death sentences carried out. For this reason the law stipulates that, if a person under sentence of death shows genuine signs of repentance, the death sentence may be commuted to a sentence of life imprisonment, after a two-year interval. If the sincere signs of repentance are matched by exemplary behaviour, the sentence may be commuted to a 15 to 20 year prison sentence on expiry of the period of suspension. The only death sentences carried out, by decision or with the approval of the People's Supreme Court or the appropriate next highest ranking people's court, are those handed down against individuals who shamefully refuse to reform, and in particular when it has been established that they have wilfully committed a further crime while serving their sentence.

128. It is apparent from extensive judicial experience that persons under sentence of death who benefit from a two year stay do not feel the threat of execution during that period, and it is therefore inappropriate to describe this practice as psychological torture. As the vast majority of persons under sentence of death are entitled to a commuted sentence at the end of the stay of execution, the death penalty is carried out only in exceptional cases. For this reason criminals are convinced that, in order to avoid the death sentence, it is sufficient for them not to refuse to mend their ways. They also know that if they show clear signs of repentance and exemplary behaviour, their sentence may be commuted to a fixed-term sentence. Furthermore, prison staff provide them with valuable assistance and advice to enable them to recognize the harmful nature of their criminal behaviour and to realize that the purpose of the suspended death sentence is to provide them with a way out. Prison staff actively encouraged them to strive for a reduction in their sentence. Experience in this field shows that, after two years, 99 per cent of people under sentence of death have their sentence commuted to a fixed-term prison sentence or to life imprisonment. Persons sentenced to life imprisonment may, moreover, be given a fixed-term sentence if they reform and behave in an exemplary fashion. Thus, it is apparent that the system of a suspended death sentenced is suited to China's circumstances and is ample proof of the respect for human rights and humanitarian principles that China had always demonstrated.

129. China's Constitution contains a provision on amnesty, but makes no provision for the right to grant pardon. It stipulates that the Standing Committee of the People's National Assembly may decree an amnesty. Since 1959, there have been seven amnesties in all.

Annex

QUESTIONS PUT BY THE MEMBERS OF THE COMMITTEE AGAINST TORTURE DURING THE CONSIDERATION OF THE INITIAL REPORT OF CHINA ON THE IMPLEMENTATION OF THE CONVENTION AND REFERENCES TO THE REPLIES IN THIS REPORT

1. What is the position of the Convention in China's domestic law? Are there any provisions in China's domestic law that correspond to each article of the Convention? (Mrs. Chanet, Mr. Gil Lavedra and Mr. Voyame)

Please refer to paragraphs 61, 62 and 63 of this report.

2. Does Chinese legislation give a specific definition of the crime of torture? Does that definition correspond in full to the definition given in the Convention? (Mrs. Chanet, Mr. Burns)

Please refer to paragraphs 62 and 63 of this report.

3. How severely is torture punished in comparison with other offences? What penalties are laid down for torture? If the maximum penalty is three years' imprisonment, torture would not appear to be considered an extremely serious offence. (Mr. Gil Lavedra)

Please refer to paragraphs 62, 74, 75, 80 and 81 of this report.

4. Does Chinese legislation authorize certain types of corporal punishment? If so, what are they? Has such punishment been imposed recently? (Mr. Burns)

Please refer to paragraphs 75 and 76 of this report.

5. Does China punish mental torture? (Mr. Voyame)

Please refer to paragraph 77 of this report.

6. Is not the fact that counter-revolutionary propaganda or insult to the army are classified as offences likely to open the way to abuse? (Mr. Gil Lavedra)

Please refer to paragraphs 50 and 51 of this report.

7. Is it possible to justify or excuse torture by citing superior orders? Are internal disturbances considered to be a circumstance that makes it possible to derogate from implementation of the Convention? (Mr. Gil Lavedra)

Please refer to paragraph 71 of this report.

8. The practice of re-educating counter revolutionaries (considered to be political prisoners), through forced labour appears to contravene article 16 of the Convention. A description of the conditions in which that labour is carried out might enable the Committee to see whether or not it constitutes cruel, inhuman or degrading treatment. (Mrs. Chanet)

Please refer to paragraph 52 of this report.

9. Are there are any examples of cases in which persons guilty of torture have been sentenced? (Mr. Voyame)

Please refer to paragraph 108 of this report.

10. In paragraph 23 of its initial report, China mentioned that procuratorates had investigated more than 30,000 cases of infringements of other citizens' rights and that over 20,000 of those cases had been brought to the courts; what was the nature of those cases? (Mr. Sørensen, Mrs. Chanet, Mr. Khitrin and Mr. Mikhailov)

Please refer to paragraph 107 of this report.

11. Are Chinese citizens entitled to file complaints about torture? Do foreigners also have this right? (Mrs. Chanet)

Please refer to paragraphs 40 and 72 of this report.

12. Which authorities are empowered to receive complaints filed by citizens about torture? (Mr. Dipanda Mouelle)

Please refer to paragraphs 34, 113, 114, 115 and 116 of this report.

13. Chinese legislation prohibits fabrication or distortion of the facts, but as it is usually hard to produce evidence of torture, what means are available to citizens to provide such evidence? According to paragraphs 30 and 31 of the initial report, investigations into torture are the responsibility of the administrative body concerned or the administrative body at the next higher level; is that approach effective? (Mrs. Chanet)

Please refer to paragraphs 39, 40, 57, 58, 59 and 104 of this report.

14. How many complaints about torture have been lodged in China? How many have been declared admissible? What punishment has been applied? (Mr. Khitrin)

Please refer to paragraph 108 of this report.

15. Is there a special law concerning compensation for torture victims? How is that provision implemented? What procedure is followed to compensate victims? (Mr. Mikhailov and Mr. Voyame)

Please refer to paragraphs 117, 118 and 119 of this report.

16. Are torture victims able to obtain the moral reparation and medical treatment they require? (Mr. Sørensen)

Please refer to paragraph 118 of this report.

17. Pursuant to article 68 of the Administrative Procedure Law (Code of Administrative Procedure), the members of the personnel of an administrative body who have committed intentional or gross mistakes are liable for the

compensation paid; in this case, what are the civil, criminal or administrative safeguards for the application of that provision? (Mr. Mikhailov)

Please refer to paragraph 117 of this report.

18. Does Chinese legislation contain a provision stipulating that a statement obtained under torture may not be used as evidence? (Mrs. Chanet, Mr. Gil Lavedra, Mr. Burns and Mr. Voyame)

Please refer to paragraphs 40 and 120 of this report.

19. Does Chinese legislation contain a jurisdictional rule for hearing cases of violations committed abroad by foreigners? (Mrs. Chanet)

Please refer to paragraphs 82, 83 and 84 of this report.

20. Could China provide details concerning the implementation of those articles of the Convention that deal with universal jurisdiction and extradition? (Mr. Voyame)

Please refer to paragraphs 71, 82, 83, 84, 99 and 100 of this report.

21. How does China ensure that education and information regarding the prohibition against torture are disseminated? (Mr. Sørensen)

Please refer to paragraphs 68, 69, 70 and 101 of this report.

22. How does China disseminate the Convention among the population? (Mr. Khitrin)

Please refer to paragraphs 69, 70 and 101 of this report.

23. What methods are used by China to achieve the complete elimination of torture? (Mr. Sørensen)

Please refer to paragraphs 64, 65, 66, 67, 102 and 103 of this report.

24. In paragraph 46 of the initial report, it was stated that a public security organ might detain any person in the process of committing a crime or "proved by conclusive evidence to be guilty". How does the public security organ determine whether a person who has not yet been tried by a court is guilty? (Mr. Dipanda Mouelle)

Please refer to paragraphs 113, 114 and 115 of this report.

25. Article 43 of the Code of Criminal Procedure stipulates that the family of a person under arrest is not informed "if such notification would hinder the investigation". What is meant by the expression "hinder the investigation"? Are there any legal restrictions to the implementation of

this provision? Is it frequently invoked? Are there any procedural safeguards in this sphere to avert abuse? (Mr. Sørensen, Mr. Mikhailov, Mr. Voyame and Mr. Gil Lavedra)

Please refer to paragraphs 85 and 86 of this report.

26. What are the functions of the members of the armed forces with regard to detention? (Mr. Gil Lavedra)

Please refer to paragraphs 30, 66, 72 and 85 of this report.

27. Are there secret trials and incommunicado detention in China, and if so, what are the duration and limits and what legal safeguards are there for the detainee? (Mr. Burns and Mr. Gil Lavedra)

Please refer to paragraphs 66, 67, 85, 87, 88, 89, 110 and 111 of this report.

28. Have any cases of extrajudicial, clandestine or illegal detention been brought to the attention of the Chinese authorities? Have those responsible been identified? (Mr. Gil Lavedra and Mr. Voyame)

Please refer to paragraph 107 of this report.

29. What is the length of pre-trial detention? May detainees undergo medical examinations? (Mr. Gil Lavedra)

Please refer to paragraphs 66, 88 and 89 of this report.

30. Are persons under arrest brought promptly before a judge? (Mr. Voyame)

Please refer to paragraphs 88 and 89 of this report.

31. Has the transfer of the administration of prisons to the Ministry of Justice actually led to any improvements? (Mr. Dipanda Mouelle)

Please refer to paragraph 109 of this report.

32. How many prisons and prisoners are there in China? (Mr. Burns)

Please refer to paragraph 112 of this report.

33. What machinery is available for monitoring the conditions of detention of prisoners in order to avoid cases of torture? (Mr. Gil Lavedra)

Please refer to paragraphs 59, 104, 105, 114 and 115 of this report.

34. Do prisoners have the right to file complaints? (Mr. Voyame)

Please refer to paragraphs 93, 104, 105 and 114 of this report.

35. What is the role played by medical personnel in detention centres and in establishing cases of torture? Are detainees entitled to demand a medical

examination? Is there effective and independent medical supervision of prisoners? Is the doctor chosen by the prisoner or the authorities? (Mr. Sørensen, Mr. Voyame, Mrs. Chanet)

Please refer to paragraphs 95 and 104 of this report.

36. What distinction is made under Chinese law between re-education through labour and reform through labour? (Mr. Burns)

Please refer to paragraphs 42, 45, 46, 47 and 48 of this report.

37. What is the average length of the terms of imprisonment of political prisoners? What are the reasons for convicting them? How are they treated? (Mr. Sørensen)

Please refer to paragraphs 49, 50, 51 and 52 of this report.

38. How are political dissidents treated as compared with other prisoners? (Mr. Gil Lavedra)

Please refer to paragraphs 49, 50, 51 and 52 of this report.

39. Are there any specific reform establishments for counter-revolutionary offenders? (Mr. Khitrin)

Please refer to paragraph 52 of this report.

41. What is the relationship between the public security services, the Ministry of Justice and the other judicial authorities? Are the powers and jurisdiction of the public security services governed by laws other than the Code of Criminal Procedure? (Mr. Dipanda Mouelle, Mr. Khitrin, Mr. Mikhailov and Mr. Voyame)

Please refer to paragraphs 29, 30, 31 and 32 of this report.

42. What is the situation regarding the respective jurisdictions of the department in charge of disciplinary affairs and of the courts? (Mrs. Chanet)

Please refer to paragraphs 35, 36 and 65 of this report.

43. How is the judicial system organized and structured? What are the characteristics and jurisdiction of the different courts, including the people's courts, any special or military courts, and administrative courts? (Mr. Gil Lavedra)

Please refer to paragraphs 14, 21, 22, 23, 24, 25 and 26 of this report.

44. How are the respective jurisdictions of the administrative courts and the public security services, defined, in particular for the purpose of preventing torture? (Mr. Gil Lavedra)

Please refer to paragraph 58 of this report.

45. How are judges and prosecutors appointed? (Mr. Burns and Mr. Dipanda Mouelle)

Please refer to paragraph 28 of this report.

46. How does Chinese legislation ensure the independence of the courts and of judges? (Mr. Burns and Mr. Gil Lavedra)

Please refer to paragraphs 30 and 31 of this report.

47. Information about the organization and structure of the Chinese court system as a whole, including the text of the Code of Criminal Procedure and details of penalties imposed, together with precise explanations, would be welcome. (Mr. Gil Lavedra)

Please refer to paragraphs 33, 34, 35, 36, 37, 38, 39 and 42 of this report.

48. Information on the constitutional principles applied in criminal law, with particular reference to the presumption of innocence and the principles of the International Covenant on Civil and Political Rights would be welcome. (Mr. Gil Lavedra)

Please refer to paragraphs 30, 31, 62, 65, 72, 74 and 75 of this report.

49. Is there a more precise provision concerning the implementation of article 3 of the Penal Code (concerning territorial jurisdiction)? In particular, how is the restriction that the law is applicable "unless the case is covered by special legal provisions" to be understood? (Mr. Khitrin)

Please refer to paragraphs 82 and 83 of this report.

50. What is the jurisdiction of the military authorities with regard to putting down counter-revolutionary activities? (Mrs. Chanet)

Please refer to paragraphs 20, 21, 24 and 27 of this report.

51. If the death sentence has been handed down, is any appeal possible? What method of execution is employed? (Mr. Burns, Mrs. Chanet)

Please refer to paragraphs 123, 124, 125 and 126 of this report.

52. Does not the suspended death sentence amount to inhuman and degrading treatment as the convict is for a long time unaware whether the sentence will be carried out? (Mrs. Chanet, Mr. Dipanda Mouelle)

Please refer to paragraphs 127 and 128 of this report.

53. Does the law make any provision for remedies such as pardon and amnesty? (Mrs. Diaz Palacios)

Please refer to paragraph 129 of this report.

54. How does China provide legal training? (Mrs. Diaz Palacios)

Please refer to paragraphs 68, 69, 70, 101 and 102 of this report.

N.B.: The questions are not classified; they are set out in the order in which they were put by members of the Committee. This list is provided for reference purposes, so as to reflect more objectively and accurately the concerns of the members of the Committee when they considered China's initial report, as well as the replies given in this supplementary report.